



Metropolitan Police Department
Office of Professional Responsibility
Civil Rights & Force Investigations Division
MOA Compliance Monitoring Team



Metropolitan Police Department
and
U. S. Department of Justice

Memorandum of Agreement
Progress Report



JULY 9, 2004

“Important principles may and must be inflexible.”

-Abraham Lincoln

I n t r o d u c t i o n

In January 1999, Chief of Police Charles Ramsey and District of Columbia Mayor Anthony Williams asked the United States Department of Justice to review the Metropolitan Police Department's (MPD) practices as they related to police use of force. In March 2001, the U.S. Department of Justice (DOJ) concluded its review, and later entered into a Memorandum of Agreement (MOA) with the District of Columbia and the Metropolitan Police Department on June 13, 2001. The Agreement built upon the work MPD started during the course of the review, and provided that an Independent Monitor would evaluate the implementation of the Agreement. When the balance of the reforms contained in the Agreement are implemented, the Metropolitan Police Department will be a model for the nation on how to uphold the rule of law while using force only when and to the extent necessary.

This progress report is the tenth submitted by the Department's Compliance Monitoring Team (CMT). The Compliance Monitoring Team, part of the MPD's Office of Professional Responsibility (OPR), was created by Chief Ramsey to ensure the timely implementation of and compliance with the Memorandum of Agreement. This quarterly report reflects MPD's Memorandum of Agreement activity from April 1, 2004, through June 30, 2004.

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MPD's quarterly reports are required by Memorandum of Agreement Paragraph 175. They have been designed by the MPD to share our MOA-related activities not only with the U.S. Department of Justice and the Office of the Independent Monitor (OIM), but also throughout the Metropolitan Police Department and the citizenry at large. Furthermore, there is an addendum to this quarterly report that lists all of the MOA paragraphs and the status of each item.

During this quarter, the Metropolitan Police Department began its fourth year of work on implementing the reforms called for in the Memorandum of Agreement. The fourth and fifth years of the MOA are significant in that MPD's "substantial compliance" with the MOA will be measured during this time. Paragraph 182 of the MOA reads, in part, that,

"The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. The burden shall be on the City and MPD to demonstrate that it has substantially complied with each of the provisions of the Agreement and maintained substantial compliance for at least two years..."

The Office of the Independent Monitor is tasked with determining if MPD has substantially complied with the MOA and uses their quarterly reports to provide an analysis of MPD's compliance efforts.

As previously reported, the Office of the Independent Monitor (OIM), MPD, and DOJ have devoted a significant amount of time to further defining the concept of substantial compliance to ensure that there are clearly defined measures for each requirement of the MOA. This quarter was no exception, and the three parties made significant progress on further defining how "substantial compliance" will ultimately be measured. On April 8, 2004, the three parties held a very productive meeting on the topic and agreed to some general guidelines for how substantial compliance would be measured for the remainder of the Agreement. At that meeting, we discussed the importance of balancing both quantitative and qualitative measures for substantial compliance. Specifically, we agreed that for the majority of MOA paragraphs, the objective compliance measurement rate would be 95 percent. However, we also agreed that the OIM may find MPD in substantial compliance with MOA requirements when the objective measurement falls below 95 percent if, in the OIM's judgment, MPD has appropriate systems in place to address those shortfalls, and MPD is using those systems to ensure the accountability of its members and of the Department itself.

The OIM had previously completed a draft compliance document that provided proposed compliance definitions for 126 of the 194 MOA paragraphs.¹ The OIM completed revisions to the document during this quarter, based on previous meetings and discussions with both DOJ and MPD. MPD looks forward to operationalizing these definitions and moving forward with our compliance efforts. MPD will continue working with both the Independent Monitor and the Department of Justice on substantial compliance. A more detailed discussion of the OIM's activities and of substantial compliance can be found in the "*Independent Monitor*" section of this report.

MPD continues to be pleased with the other progress made by the Department during this reporting period. During this quarter, MPD implemented an important MOA-related policy entitled, *Carrying Service Firearms While Off-Duty in the District of Columbia*. Under District of Columbia law and regulations, MPD members are "held to always be

¹ It should be noted that the OIM provided compliance definitions for all of the MOA paragraphs that can be measured. Paragraphs that contained either definitions or background information will not be measured.

on duty," and are required to carry their badge and service firearms at all times when in the District of Columbia. MOA paragraph 42 required the Mayor submit a request to amend DC Code to allow the Chief of Police to determine the policy for off-duty MPD officers concerning the carrying of firearms while in the District of Columbia, including, but not limited to appropriate prohibitions regarding the carrying and or use of firearms in situations where an officer's performance may be impaired. Special Order 04-07, *Carrying Service Firearms While Off-Duty in the District of Columbia*, was implemented on April 1, 2004, and defines the circumstances when an off-duty member of the force is excused from carrying his or her authorized service firearm while off-duty. MPD is very pleased to have implemented this important policy. A copy of the Special Order is included in the appendix of this report.

MPD has also continued its important work with the Department of Justice on revisions to the Use of Force Incident Report Form (UFIR) required by MOA paragraph 53. MOA paragraph 53 states, in part, that,

"...The policy shall require officers to notify their supervisor immediately following any use of force or receipt of an allegation of excessive use of force and to complete a Use of Force Incident Report. Additionally, the policy shall require officers to complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person..."

MPD obtained feedback from officers that the form, particularly the layout, was complicated and confusing. MPD believed that such confusion contributed to officer frustration with the UFIR. Accordingly, MPD proposed revisions to the form. MPD appreciates DOJ's continued assistance on this matter, and we are hopeful we can resolve our outstanding issues during the next quarter. A more detailed discussion of the UFIR can be found in the *"Use of Force Incident Report"* section of this report.

The Department again focused a great deal of resources on the Personnel Performance Management System (PPMS) during this quarter. The PPMS is an MOA-mandated system that will be,

*"a computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of MPD and its personnel."*²

MPD experienced significant delays in beginning this project and was unable to meet the original deadlines set forth in the MOA. Accordingly, in September 2003, DOJ and MPD agreed to a modification to the MOA.³ The purpose of the modification was to negotiate new deadlines for MOA activities related to PPMS.

² MOA Paragraph 106

³ See *Joint Modification No.2 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department, September 30, 2003*

However, as previously reported, MPD experienced a significant setback in the area of funding for PPMS during the last reporting period. MPD had to temporarily interrupt work with our selected vendor on March 31, 2004 due to a lack of funding. Accordingly, since March 2004, MPD has been directing its efforts toward securing the necessary funding for restarting work with IBM/CRISNet.

MPD originally notified DOJ of the funding setback on March 8, 2004 and has kept both DOJ and the OIM updated during this quarter on our progress with identifying necessary funding. We hope to resolve this issue as soon as possible. While this work interruption has impacted our development of PPMS, both MPD and the City are working very hard to ensure that the impact of the interruption is minimized.

Based on the Second Modification to the MOA, MPD was required to provide both DOJ and the Independent Monitor a beta version of PPMS for testing beginning on June 25, 2004. Given the current financial setbacks, MPD realized that it would be unable to meet this date. Accordingly, on June 14, 2004, MPD formally notified the Department of Justice that we would be unable to meet these deadlines and formally requested a third modification to the MOA. A more detailed discussion of MPD's PPMS efforts can be found in the *"Personnel Performance Management System"* section of this report.

In addition to the activities discussed above, the Metropolitan Police Department continued approved-policy implementation activities, and continued to work with the Office of Citizen Complaint Review (OCCR) to revise the Memorandum of Understanding (MOU) between the two agencies. MOA Paragraph 85 requires that, in part,

"...the City and MPD shall develop a written plan, in timely consultation with DOJ, that clearly delineates the roles and responsibilities of OCCR and MPD regarding the receipt, investigation, and review of complaints. At minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating, and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when, and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints; and the role and responsibilities of MPD official serving on the Citizen Complaint Review Board (CCRB)."

Both MPD and OCCR worked hard to draft language that will be agreeable to both parties. On May 3, 2004, MPD and OCCR notified DOJ that all remaining issues with the MOU had been resolved. DOJ provided comments on the MOU on May 25, 2004. MPD and OCCR worked during the remainder of the quarter to address DOJ's concerns, and we believe significant progress was made during this quarter. A more detailed discussion of MPD's work with OCCR and the Memorandum of Understanding can be found in the *"Office of Citizen Complaint Review"* section of this report.

MPD also submitted a number of additional deliverables to the Department of Justice for review this quarter including *Limitation on Work Hours General Order* (MOA Paragraph 159), a revised *Canine Teams General Order* (MOA 44-46), and an update regarding training provided to the Force Investigation Team (FIT) (MOA paragraph 84).

MPD again worked with the Office of the Independent Monitor during this quarter in coordinating access to MPD facilities and documents. The OIM continued its practice of reviewing all FIT investigations as well as a random selection of misconduct and chain of command use of force investigations in order to assess compliance with the MOA.⁴ The OIM also devoted significant time to reviewing MPD's Use of Force Review Board (UFRB). They reviewed all of the use of force investigations reviewed by the Board during 2003 and also provided in depth reviews of those investigations in cases where the UFRB recommended training or disciplinary action as part of their findings. The OIM identified several areas of concern with the UFRB and shared those concerns with MPD at the end of the quarter. A more detailed discussion of their findings can be found in the "*Use of Force Review Board*" section of this report.

The OIM also submitted their most recent quarterly report on May 13, 2004. The Independent Monitor's report detailed their analysis of MPD's compliance with the MOA during the first quarter of 2004. Among the highlights in the report, the OIM provided a favorable review of MPD's canine program. Among their findings, they reported that,

*"The OIM conducted an extensive review of canine deployments and "bite" incidents in 2003, and we have concluded that, at this time, MPD's canine program is in substantial compliance with the requirements of the MOA relating to supervisor approval of canine deployments."*⁵

The OIM also completed their review of the State of Maryland Police and Corrections Training Commission (MPCTC) Enhanced Instructor Certification Course. MPD notified the Department of Justice in December 31, 2002, that we had chosen the MPCTC program as the method for training our instructors pursuant to MOA paragraphs 136 and 137. Accordingly, DOJ requested that the OIM review the training to ensure it was compliant with the MOA. The OIM reports that, "the MPCTC program is comprehensive and satisfies the requirements of the MOA with respect to instructor training and certification."⁶

However, in their report, the OIM also discussed areas of concern. They raised concerns regarding the delays MPD has experienced in submitting its Field Training

⁴ It should be noted that both Force Investigation Team (FIT) and Office of Citizen Complaint Review (OCCR) cases are not included in the random sample.

⁵ See *Eighth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, May 13, 2004, p. 2

⁶ See *Eighth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, May 13, 2004, p. 4

Officer Program to DOJ (MOA paragraph 121f) as well as the recent decline in the completion rate of the UFIRs. MPD will work to address these and other compliance issues raised by the OIM in a timely fashion. MPD continues to find the OIM's quarterly reports to be comprehensive, fair, and well-written analyses of MPD's Memorandum of Agreement activities. A more detailed discussion of the OIM's review can be found in the "*Office of the Independent Monitor*" section of this report.

Finally, the Department of Justice continued its work with MPD and provided comments on MPD work products during the quarter consistent with MOA paragraph 178.⁷ DOJ provided comments on a number of MPD deliverables including:

- Limitation on Work Hours General Order (MOA paragraph 159)
- Five MOA-related Lesson Plans (MOA paragraphs 84, 122, and 129)
- MPD and OCCR Memorandum of Understanding (MOA paragraph 85)
- MPD's Chain of Command Misconduct Investigations General Order and Chain of Command Misconduct Investigations Manual (MOA paragraph 83)

A more detailed description of MPD and DOJ's efforts can be found in the "*Department of Justice*" section of this report.

The Metropolitan Police Department is proud of its Memorandum of Agreement compliance efforts this quarter, and is confident that MPD is continuing on its way to becoming a model for the nation on how to uphold the rule of law while using force only when and to the extent necessary. MPD recognizes the importance of ensuring substantial compliance with all of the requirements of the MOA, and we will continue to treat our MOA efforts as a priority.

Compliance Monitoring Team

The Compliance Monitoring Team (CMT) was created by Chief Ramsey in February 2002, to ensure the timely implementation of and compliance with the Memorandum of Agreement. The CMT falls under the Civil Rights and Force Investigations Division, located within the Office of Professional Responsibility (OPR). The CMT continued its activities during this reporting period, and coordinated a variety of Memorandum of Agreement efforts. During this quarter, members of the Compliance Monitoring Team again worked closely with the Department's PPMS project leaders and other stakeholders on PPMS-related aspects of the Memorandum of Agreement. The CMT met repeatedly in person and via teleconference with both the Department of Justice and the MPD PPMS Project Management Office to discuss MPD's efforts to secure

⁷ MOA paragraph 178 reads, "*DOJ shall review documents and information provided by MPD and the Monitor and shall provide its analysis and comments to the City, MPD and the Monitor at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts.*"

necessary funding to restart PPMS and also to discuss MPD's proposal for a third modification to the MOA.

As described above, the CMT continued to devote significant time this quarter, along with the Department of Justice, in assisting the OIM with their efforts to define substantial compliance. On April 8, 2004, the CMT, along with Chief Ramsey, met with both DOJ and the OIM and had a very productive meeting on the concept of substantial compliance and agreed to some general guidelines for how substantial compliance would be measured for the remainder of the Agreement. The CMT also coordinated MPD's review of the Monitor's revised substantial compliance definitions for each paragraph of the MOA. As discussed above, the OIM had previously completed a draft compliance document that provided proposed compliance definitions for 126 of the 194 MOA paragraphs.⁸ The OIM completed revisions to the document during this quarter based on previous meetings and discussions with both DOJ and MPD. The CMT has worked hard to ensure that the definitions used for substantial compliance encompass both quantitative and qualitative measures in order to fairly evaluate MPD's efforts. The Compliance Monitoring Team feels this balance is critical as we move forward to ensure that the OIM's analysis remains complete, transparent, and statistically sound.

The CMT continued to provide support to various MPD units to assist them in completing MOA deliverables, and to facilitate compliance documentation. CMT representatives worked with the Department's Canine Unit to prepare a response to the Department of Justice's March 31, 2004 comments on MPD's revised *Canine Teams General Order*. The CMT also coordinated efforts within the Office of Professional Responsibility to respond to the Independent Monitor's April 9, 2004 report, *Technical Assistance Related to MPD's Chain of Command Investigations*. The report, prepared at the request of Chief Ramsey, provided the OIM's analysis of MPD's Internal Affairs investigations as well as "chain of command" investigations of use of force and misconduct. The report identified areas within MPD's investigations requiring improvement. Accordingly, the CMT helped to coordinate the development of a policy and investigative templates that addressed some of the Monitor's recommendations. These documents were provided to both the OIM and DOJ on June 7, 2004. A more detailed description of MPD's efforts can be found in the "*Investigations*" section of this report.

MPD also continued its work with the Office of Citizen Complaint Review to help resolve outstanding issues surrounding the Memorandum of Understanding between MPD and OCCR (MOA Paragraph 85). DOJ provided comments on the revised Memorandum of

⁸ It should be noted that the OIM provided compliance definitions for all of the MOA paragraphs that can be measured. Paragraphs that contained either definitions or background information will not be measured.

Understanding on May 25, 2004. The CMT and OCCR worked together this quarter in preparing a revised version of the MOU that incorporates DOJ's comments and hopes to share the revision with DOJ early during the next reporting period.

The CMT continued its practice of meeting monthly with the Department of Justice to discuss MOA activities, and also worked very closely with the Independent Monitor to assist their police practice experts in reviewing MPD compliance efforts. In addition, the CMT remains the central repository for MPD's Memorandum of Agreement documents, and has been documenting and transmitting draft policies and other deliverables to DOJ and the Office of the Independent Monitor (MOA Paragraph 173). Finally, the Compliance Monitoring Team continues to closely monitor MPD's costs associated with the Office of the Independent Monitor. With the assistance of the D.C. Office of Contracting and Procurement and MPD's Accounts Payable office, the CMT continues to actively review OIM invoices to control costs and ensure accountability.

General Orders and Policies

Over the course of the Memorandum of Agreement, the U.S. Department of Justice has approved a number of seminal policies related to the Memorandum of Agreement. They include:

- *Use of Force General Order* (MOA Paragraphs 37-40)
- *Use of Force Investigations General Order* (MOA Paragraph 53)
- *Use of Force Incident Report* (MOA Paragraph 53)
- *Handling of Service Weapons General Order* (MOA Paragraphs 41 and 43)
- *Canine Teams General Order* (MOA Paragraphs 45 and 46)
- *Oleoresin Capsicum Spray General Order* (MOA Paragraphs 47-50)
- *Force Investigation Team Organizational Plan and Operations Manual* (MOA Paragraph 57)
- *Force Related Duty Status Determination General Order*
- *Carrying Weapons and Transporting Prisoners Aboard Aircraft General Order*
- *Use of Force Review Board General Order* (MOA Paragraph 67)
- *The Office of Internal Affairs Operational Manual* (MOA Paragraph 72)
- *Serious Misconduct General Order* (MOA Paragraph 72)
- *Community Outreach Program for Filing Citizen Complaints* (MOA Paragraph 91)
- *Specialized Mission Unit General Order* (MOA 150-158)
- *Carrying Service Firearms While Off-Duty in the District of Columbia* (MOA 42) ⁹

⁹ It should be noted that the special order "*Carrying Service Firearms While Off-Duty in the District of Columbia*," which was drafted in order to demonstrate partial compliance with MOA paragraph 42, did not require formal DOJ approval. Accordingly, a copy of the policy was shared with both DOJ and the OIM after it was implemented.

Pending Reengineered Policies

During this reporting period, the Metropolitan Police Department and the U.S. Department of Justice continued to exchange a variety of detailed correspondence concerning numerous draft MPD policies and procedures. They are listed in order of last activity unless otherwise noted. A status matrix containing all of the MOA paragraphs is submitted as an attachment with this report.

On November 27, 2002, MPD submitted a draft plan to limit the number of hours worked by MPD officers in any 24-hour period and in any seven-day period (MOA Paragraph 159). Since the submission of the plan, MPD has developed a draft general order. On September 30, 2003 DOJ requested a status update on progress with that order. MPD submitted a draft general order for DOJ's review and approval on February 23, 2004. DOJ provided comments on the order on June 10, 2004. MPD reviewed DOJ's comments and prepared a response that was submitted to DOJ on June 30, 2004.

The Metropolitan Police Department submitted a draft *Citizen Complaint General Order* (MOA Paragraph 94) to DOJ on October 4, 2002. DOJ replied with detailed comments on November 25, 2002. MPD forwarded the draft to the Office of Citizen Complaint Review on December 27, 2002. The Office of Citizen Complaint Review provided their comments to MPD on January 17, 2003. After completion of the draft MPD OCCR Memorandum of Understanding on October 7, 2003, MPD incorporated relevant portions of the MOU into the general order and shared a revised draft of the order with OCCR on December 8, 2003. OCCR provided comments on December 10, 2003. On March 31, 2004 MPD notified DOJ that we had become aware that the Fraternal Order of Police (FOP) had raised concerns regarding OCCR and that those concerns impacted their ability to comment on the general order. On April 30, 2004, the FOP received further clarification from OCCR regarding their policies in dealing with MPD officers. Accordingly, on June 23, 2004, MPD notified the FOP that we would be moving forward with the submission of the order to DOJ. On June 29, 2004, the FOP provided their comments on the order. MPD is currently reviewing those comments and hopes to submit the revised version of the general order to DOJ early in the next reporting period.

The Metropolitan Police Department submitted a draft *Chain of Command Misconduct Investigations Manual* (MOA Paragraph 83) to DOJ on October 25, 2002. DOJ provided comments on the Manual on March 26, 2003. Part of the requirement of MOA Paragraph 83 is that MPD develop a template to assist investigators with completing their misconduct investigations. Through the PPMS development process, MPD realized that the template should be included in the PPMS system to ensure that consistent, comprehensive information is collected regarding misconduct investigations. However, in order to accomplish this, IBM/CRISNet requested the completed template by January

12, 2004 to ensure that it was included in the design of the system. Given that the template requires DOJ approval, MPD requested that DOJ expedite the review of the investigative template and review the template separate from the manual itself. DOJ agreed to MPD's proposal, and the template was submitted to DOJ for review on December 30, 2003. DOJ provided their approval "preliminarily," subject to MPD's completion of the several suggested changes, on January 7, 2004. MPD forwarded the revised, final template to DOJ and to IBM/CRISNet on January 12, 2004. MPD also finalized revisions to the *Chain of Command Investigations Manual* (MOA Paragraph 83), and forwarded the manual to DOJ for review on February 26, 2004. Subsequent to the submission of the manual and template, MPD received the April 9, 2004 *Technical Assistance Related to MPD's Chain of Command Investigations* report prepared by the Independent Monitor. In part, the report contained recommendations specific to the way MPD conducted its misconduct investigations. Accordingly, MPD revised the template to accommodate many of the OIM's recommendations. MPD notified DOJ of these changes to the misconduct investigation template and submitted it along with a newly created "preliminary" misconduct investigation template to DOJ for review on June 7, 2004. DOJ provided comments on the manual and templates on June 29, 2004. MPD is currently reviewing those comments.

The Metropolitan Police Department submitted a draft *Chain of Command Misconduct Investigations General Order* (MOA Paragraph 83) to DOJ on November 1, 2002. DOJ provided comments on the order on January 31, 2003. MPD provided an update on the general order to DOJ on December 31, 2003 and provided a revised version of the general order to DOJ for review on February 26, 2004. DOJ provided comments on the order on June 29, 2004. MPD is currently reviewing those comments.

MPD submitted a revised version of its approved *Canine Teams General Order* (MOA Paragraphs 45 and 46) to DOJ for review on June 4, 2003. DOJ provided comments on that order on July 25, 2003. In their July 25, 2003 letter, DOJ also promised to provide policy revisions they believed to be consistent with the Memorandum of Agreement requirements and the parties' previous agreements. On September 30, 2003, DOJ provided the policy recommendations to guide MPD's further revisions of the *Canine Teams General Order*. On December 31, 2003 MPD provided a revised general order to DOJ along with a detailed response to all of DOJ's recommended policy revisions. On March 31, 2004, DOJ provided additional comments on the revised general order. MPD provided a revised version of the general order to DOJ that attempted to address all of their remaining concerns on June 26, 2004.

As previously mentioned, MPD also completed work on a special order that addressed the amendment, approved by the District of Columbia City Council, that permits MPD's Chief of Police to designate his own policy as to when off-duty officers are required to carry their service pistols in the City (MOA Paragraph 42). The amendment, entitled the "Off-Duty Service Pistol Authorization Amendment Act of 2002," was contained in the

Fiscal Year 2003 Budget Support Act of 2002 and became law on October 1, 2002. MPD issued the order, *"Carrying Service Firearms While Off-Duty in the District of Columbia"* on April 1, 2004. A copy of the order was provided to both the Department of Justice and the Independent Monitor on April 5, 2004. On June 10, 2004, the Department of Justice provided several recommendations for the order, as technical assistance. MPD is currently reviewing those recommendations.

The Metropolitan Police Department submitted a draft *Specialized Mission Units General Order* (MOA Paragraphs 150-158) to DOJ on October 4, 2002. DOJ provided comments on the order on January 31, 2003. MPD provided a revised draft of the order on June 30, 2003. DOJ provided comments on the order on August 25, 2003. MPD submitted a revised order, along with a copy of the revised *Specialized Mission Units After Action Report* on December 31, 2003. On March 30, 2004 DOJ provided their final approval for the *Specialized Mission Units General Order*. However, on March 31, 2004, MPD requested a delay in the requirement to implement the *SMU General Order*. According to the first modification to the MOA, MPD agreed to implement all DOJ approved policies within 14 business days of receiving DOJ approval.¹⁰ MPD wanted to resolve the outstanding issues regarding the *After Action Report* prior to implementing the *SMU General Order* since the *SMU General Order* contains reference to the *After Action Report* and outlines the process for completing it. Accordingly, to minimize confusion, MPD requested a delay in implementing the *SMU General Order* until 14 business days after DOJ's approval of the *After Action Report*. DOJ granted MPD's request, and MPD prepared a written response to DOJ's March 30, 2004 letter on April 9, 2004. During this quarter, both MPD and DOJ worked to address the remaining issues regarding the *After Action Report*.

MPD issued the special order, *"Carrying Service Firearms While Off-Duty in the District of Columbia"* on April 1, 2004, in compliance with MOA paragraph 42.

The Metropolitan Police Department submitted a draft *Enhanced Performance Evaluation System Protocol* (MOA Paragraph 118) to DOJ on November 8, 2002. DOJ provided comments on the protocol on May 2, 2003. MPD provided a status report on those comments on September 30, 2003. On October 6, 2003, DOJ provided comments on the status report by email. MPD provided an additional status report on our efforts with the protocol on March 5, 2004. In that report, MPD notified DOJ that we anticipated providing the finalized plan to DOJ for review in early July 2004.

The Metropolitan Police Department submitted a draft *Canine Operations Manual* (MOA Paragraph 147) to DOJ on November 27, 2002. DOJ provided comments on the manual

¹⁰ See *Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department*, September 30, 2002, paragraph 6.

on September 30, 2003. In their comments, DOJ stated that, "The materials which MPD submitted will likely need to be substantially revised and expanded upon once DOJ and MPD reach agreement about how this methodology is going to be implemented at MPD in compliance with the MOA." MPD has delayed making revisions to the Manual while MPD and DOJ have been revising the *Canine Teams General Order*. Given the progress made on the order during this quarter, MPD hopes to receive approval on the order shortly, and will revise the manual accordingly.

The Metropolitan Police Department submitted a draft *Enhanced Field Training Officer Program Protocol* (MOA Paragraph 121f) to DOJ on December 6, 2002. DOJ provided comments on MPD's protocol on September 30, 2003. MPD has experienced delays in submitting a revised protocol to DOJ, but hopes to submit a response to DOJ during the next quarter.

A draft *Disciplinary Process General Order* (MOA Paragraph 105) was submitted to DOJ for review on May 19, 2003. It is noted that the draft policy was due to DOJ during the renegotiated period of the week of November 17, 2002. However, as previously reported, MPD shared a draft of the order with the Fraternal Order of Police for comment. Prior to November 17, 2002, the FOP indicated that they had concerns with aspects of the draft order. MPD notified DOJ of those concerns and chose to delay the submission of the draft order to address the FOP's concerns. DOJ provided comments on the draft May 19, 2003 draft order on August 25, 2003. MPD is continuing to review those comments in consultation with the FOP.

Timelines

As previously reported, MPD and DOJ renegotiated a number of outstanding MOA deadlines in September 2002 and agreed to a modification of the MOA.¹¹ The timeline issues excluded from the first modification were the dates that applied to the Personnel Performance Management System. On September 30, 2003, a second modification to the MOA was signed to renegotiate the outstanding deadlines surrounding PPMS-related deliverables of the MOA.¹² However, as discussed above, MPD's PPMS efforts have been interrupted due to funding issues. As previously reported, MPD notified the Department of Justice on March 8, 2004 that while MPD had made material progress with the PPMS program, existing funding for the program would be exhausted by the

¹¹ See "Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2002."

¹² See "Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2003."

end of March 2004. Accordingly, MPD discontinued its work with the selected PPMS vendor and began to aggressively pursue the identification of necessary funding.

Memorandum of Agreement (MOA) Paragraph 114d requires that MPD have a beta-version of PPMS available for DOJ and OIM testing. MOA Paragraph 111 requires that

MPD submit the "final" PPMS protocol to the Department of Justice for review. Per the September 30, 2003 modification to the MOA, both of these items had a deadline of June 25, 2004. Unfortunately, MPD realized it would be unable to meet these deadlines based on the PPMS funding setbacks. Accordingly, on June 14, 2004, MPD formally notified DOJ that we would be unable to meet these deadlines and requested a third modification to the MOA. As part of the notification, MPD committed to providing a new proposed development schedule as soon as possible. On June 18, 2004 MPD provided a proposed development schedule to further outline MPD's proposal for the modification. In addition to the proposed development schedule, MPD also provided a listing of assumptions that guided the development of the revised project schedule. MPD looks forward to DOJ's comments on the proposed dates and hopes we are able to agree to a modification the MOA that will accommodate the delays experienced in the development of PPMS. A copy of MPD's June 18, 2004 PPMS proposal is included in the Appendix of this report, and a more detailed report of the status of the PPMS project is included later in this report.

Use of Force Incident Report

As previously reported, the development and implementation of the *Use of Force Incident Report* (UFIR) raised numerous issues for the Metropolitan Police Department. The UFIR form also raised a number of concerns among the Fraternal Order of Police and the rank and file. Based on these concerns, MPD has continued to work toward revising the UFIR to make it more user-friendly. MPD obtained feedback from officers that the form, particularly the layout, was complicated and confusing. MPD believed that such confusion contributed to officer frustration with the UFIR.

As a result, MPD updated and reformatted the UFIR form, and submitted the proposed revisions, along with a detailed explanation for each proposed change, to DOJ on November 20, 2002. On March 19, 2003 DOJ provided detailed written feedback on the proposed form. MPD agreed to DOJ's recommendations regarding the UFIR, and submitted a revised UFIR that incorporated all of DOJ's suggestions on December 10, 2003. DOJ provided a response highlighting their remaining concerns on February 27, 2004.

At the request of MPD, DOJ and the Compliance Monitoring Team held a teleconference on April 2, 2004, to discuss some of the outstanding issues surrounding the revised

UFIR. MPD appreciates DOJ's willingness to further discuss their remaining concerns and felt the conference call helped to clarify the remaining issues that needed to be addressed. Accordingly, on April 9, 2004, MPD submitted a written response to DOJ's February 27, 2004 letter. After MPD's most recent letter, MPD and DOJ began to hold a series of meetings and discussions to attempt to resolve the remaining outstanding issues surrounding the revised UFIR. MPD and DOJ are working to determine the most appropriate reporting and tracking mechanism when an officer is in "receipt of an allegation of excessive use of force."¹³ Specifically, MPD is concerned with the potential situation where officers would be required to complete a UFIR when they have not used any force. DOJ has been very receptive to working with MPD on this issue, and we appreciate their continued efforts. MPD feels we made progress during this quarter, and we hope to obtain DOJ approval for the revised UFIR during the next quarter. Upon DOJ's approval of the revised UFIR, MPD will implement the revised form and post an electronic version on the Department's Intranet. MPD is confident that, when approved, the revised form will be a significant improvement over the existing UFIR.

It is important to note that both DOJ and the OIM had raised concerns regarding the recent decline in completion rate for UFIRs. A UFIR is considered "complete" when the Force Investigation Team has a hard copy of the completed UFIR at their office. The OIM raised concerns regarding the completion rate for UFIRs most recently in their May 13, 2004 quarterly report. MPD continues to work to ensure that all UFIRs are completed in a timely manner. As previously reported, the Force Investigation Team (FIT) began issuing a recurring report earlier this year for the Executive Assistant Chief of Police. The report lists all of the outstanding UFIRs by police district. District Commanders are then reminded of these outstanding UFIRs so they can ensure the members of their command forward the UFIRs to FIT. MPD has found these reports useful in helping to track down outstanding UFIRs. While we believe MPD can still improve the timeliness with which UFIRs are "completed" (i.e. forwarded to FIT), we do think these reports have helped to ensure that UFIRs do not remain outstanding. MPD is committed to ensuring that our members comply with the UFIR requirements in the MOA and plans to continue improving our compliance with this requirement.

Pointing of a Weapon at or in the Direction of a Person

In the December 10, 2003 letter to DOJ, MPD also discussed the requirements of MOA Paragraph 53. Paragraph 53 states that MPD's use of force policy shall,

"...require officers to complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person..."

¹³ MOA Paragraph 53.

Based on MPD's experience with this requirement over the last year, and based on concerns raised by the Fraternal Order of Police, MPD proposed revisiting this requirement and modifying the MOA.

MPD agrees that tracking the pointing of a weapon at or in the direction of a person is important. However, MPD does not feel that this information needs to be tracked on a *Use of Force Incident Form* per se. The MOA does not include the pointing of a weapon in its definition of use of force¹⁴, and MPD considers the pointing of a weapon to be a reportable action. However, MPD is also very mindful of the concerns of the Fraternal Order of Police. The FOP has repeatedly raised concerns that capturing a "pointing" incident on a UFIR, but not classifying it as a use of force, can be viewed as somewhat misleading.

Accordingly, MPD developed a draft *Reportable Incident Form* (RIF). The new form provides a mechanism for tracking "pointing" incidents without associating them with a use of force. Members would complete this form anytime they draw and point their weapons at or in the direction of another person. MPD included the proposed *Reportable Incident Form* with its December 10, 2003 UFIR submission to DOJ. DOJ provided a response on February 27, 2004. In their response DOJ indicated they were close to providing approval for the *Reportable Incident Form* based on MPD's response to several procedural concerns including providing assurances that the forms would receive appropriate supervisory review. MPD provided a response to DOJ on April 9, 2004. Specifically, MPD submitted a draft Teletype to DOJ for review that ensures that the *Reportable Incident Forms* receive appropriate supervisory review, comparable to the review done for completed UFIRs. MPD hopes that the draft Teletype will address DOJ's remaining concerns regarding the RIF, and that we will be able to obtain DOJ's final approval for the form during the next quarter. A copy of MPD's April 9, 2004 response along with the draft Teletype are included in the Appendix of this report.

Capturing the pointing of a weapon on the UFIR has been a serious, continuing concern of the FOP. MPD feels that capturing this information on an alternate form will help to foster the improved working relationship that we have with the FOP. MPD hopes that this form will help to address the concerns of the rank and file members while preserving the intent of the MOA to capture these actions.

Specialized Mission Unit After-Action Report

Finally, as previously reported, MPD sought to amend the reporting requirements for the UFIR form as it relates to select MPD Specialized Mission Units for incidents when multiple members of those units point their service weapon under specific enumerated circumstances. A Specialized Mission Unit is defined in the MOA as a group of officers who "engage in significant patrol-related activities on a routine basis including contacts,

¹⁴ MOA Paragraph 35.

stops, frisks, and searches.”¹⁵ Examples of Specialized Mission Units within MPD are the Emergency Response Team (ERT) and the Warrant Squad. MPD is concerned about delays in operational efficiency when numerous SMU members are engaged in a specific activity where it is expected that most, if not all, members would be pointing their weapons (such as in a high risk warrant situation).

In a letter sent to DOJ on March 5, 2003, MPD proposed that members involved in such an incident would be exempt from having each member complete a UFIR. Instead, a unit manager would complete a *Specialized Mission Unit After-Action Report*.¹⁶ DOJ provided a response to this request on August 25, 2003. In their response, DOJ recommended some revisions to the proposed form as well as revisions to the draft *Specialized Mission Unit General Order*.

On December 31, 2003 MPD provided a revised *Specialized Mission Unit After-Action Report* along with a revised *Specialized Mission Unit General Order* that incorporated the policies and procedures for the *After-Action Report*. MPD has developed the following specific criteria for when a “pointing” incident can be recorded on a *Specialized Mission Unit After-Action Report*:

- The Specialized Mission Unit (SMU) is a permanent, established unit meeting the requirements established in SMU General Order.
- The SMU is operating as a team at the time of the incident.
- The SMU is led by a clearly identified police manager during the incident (a lieutenant or above.)
- The SMU is on a pre-planned operation with a clear mission (e.g. execution of a high risk warrant).
- Members are working in unison.

MPD’s goal with the *After-Action Report* is still to capture all pertinent information from the UFIR and the proposed *MPD Reportable Incident Form*, but to do it in a single format (one after-action report completed by a manager rather than 15 individual, nearly identical reports). MPD feels that the revised *SMU General Order*, combined with the revised *After-Action Report* will accomplish this goal while meeting the spirit of the MOA.

DOJ provided comments on both the *Specialized Mission Unit General Order* and the *After-Action Report* on March 30, 2004. In their response DOJ provided final approval

¹⁵ MOA Paragraph 149

¹⁶ This form was previously called the *Specialized Mission Unit Force Incident Report* or SMUFIR

on the *Specialized Mission Unit General Order* and outlined their remaining concerns regarding the *After-Action Report*. However, on March 31, 2004 MPD requested that DOJ grant an extension for the 14-business day implementation requirement for approved policies while MPD and DOJ resolve the remaining issues with the *After-Action Report*.¹⁷ DOJ granted MPD's request, and MPD submitted a written response to DOJ's March 30, 2004 letter on April 9, 2004. MPD and DOJ have continued to work on the remaining issues with the *After-Action Report* in coordination with the discussions regarding the *Use of Force Incident Report* and the *Reportable Incident Form*. MPD appreciates DOJ's continued assistance on these very important matters, and we are hopeful we can resolve our remaining issues with all three forms during the next quarter. A copy of MPD's April 9, 2004 response regarding the After Action Report is included in the Appendix of this report.

Communications & Community Outreach

On July 26, 2002, the Metropolitan Police Department's Office of Corporate Communications submitted a communications plan to DOJ regarding the Memorandum of Agreement. However, subsequent to that date, new outreach deliverable timelines were agreed upon. A revised communications plan reflecting the new outreach dates was completed and submitted to DOJ on November 1, 2002. DOJ provided their approval of the plan on January 31, 2003.

The Metropolitan Police Department Office of Corporate Communications has been the primary generator of MOA-related communications materials and activities. The Command Staff of MPD and the Compliance Monitoring Team have also played an active role in MOA communications activities. The Citizen Complaints and Use of Force section on the MPD



MPD Civil Rights and Force Investigation Division Homepage

¹⁷ See *Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department*, September 30, 2002, paragraph 6.

website launched in 2002 continues to be a source for providing information to the public regarding MPD's efforts.¹⁸ Copies of all of MPD Memorandum of Agreement progress reports are posted on the website.¹⁹

MPD also continues to embrace the concept of multiple conduits for citizens to file citizen complaints. In addition to traditional complaint reporting methods, citizens can call a toll free telephone number (800-298-4006), email complaints to oprcompl@mpdc.org, fax complaints to (202 727-5116); and hearing impaired stakeholders can file complaints via TDD at 202-898-1454 (MOA Paragraph 92). Detailed, specific information on how to file a citizen complaint with MPD as well as a link to the Office of Citizen Complaint Review are also available on the MPD website.

Office of Citizen Complaint Review

In the District of Columbia, the investigation of citizen complaints against MPD police officers involves both the Metropolitan Police Department and the Office of Citizen Complaint Review. The District government enacted a law in 1999 establishing the Office of Citizen Complaint Review and the governing Citizen Complaint Review Board (CCRB). The mission of OCCR is to investigate, settle and adjudicate complaints of misconduct filed by the public against officers of the Metropolitan Police Department in an independent, fair and timely manner.

A Memorandum of Understanding was signed by representatives of both MPD and OCCR on September 28, 2002. The MOU was drafted, pursuant to MOA paragraph 85, to address information sharing between the two agencies, training for OCCR investigators, complaint intake and referral, witness interviews, and other items. MOA Paragraph 85 requires that, in part,

“...the City and MPD shall develop a written plan, in timely consultation with DOJ, that clearly delineates the roles and responsibilities of OCCR and MPD regarding the receipt, investigation, and review of complaints. At minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating, and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when, and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints; and the role and responsibilities of MPD official serving on the Citizen Complaint Review Board (CCRB).”

As previously noted, the Department of Justice and the Independent Monitor identified conflicts within the Memorandum of Understanding that did not comport with

¹⁸ http://www.mpdc.dc.gov/serv/citizencomplaints/file_complaint.shtm

¹⁹ Quarterly Force Statistics and MPD MOA Progress Reports can be found online at:
http://mpdc.dc.gov/serv/citizencomplaints/crfid_reports.shtm

enumerated requirements in the MOA. Further, many jurisdictional and process disagreements remained between the agencies, despite the signing of the MOU.

Over the course of the last year and a half, representatives from each agency have met to discuss revisions to the Memorandum of Understanding and to discuss outstanding issues. The meetings were very productive, and both agencies were able to agree to a number of revisions to the MOU, including in the areas of information exchange and training for OCCR investigators. Accordingly, MPD and OCCR submitted a revised MOU to DOJ on October 7, 2003. However, it was noted that one outstanding issue remained between the two agencies; MPD and OCCR were continuing discussions regarding the duties of the MPD member that serves on the Citizen Complaint Review Board, specifically the guidelines and procedures for when it would be appropriate for the MPD member of the CCRB to recuse him or herself from Board proceedings.

On December 3, 2003, DOJ contacted MPD and OCCR to express concern regarding the delay in finalizing the MOU. On December 31, 2003 MPD and OCCR responded to DOJ and requested that DOJ move forward with their review of the MOU prior to resolution of the "recusal" issue. Although both parties were mindful of DOJ's desire to review "final" documents, both MPD and OCCR agreed that it would be beneficial to have the DOJ review begin since the remaining issue had no significant link to the MOA.

On May 3, 2004, MPD and OCCR notified DOJ that that the Citizen Complaint Review Board had approved the re-drafting of the "MPD member recusal" section of the MOU, and therefore, all remaining issues with the MOU had been resolved. DOJ provided their comments on the MOU on May 25, 2004. MPD and OCCR worked during the remainder of the quarter to address DOJ's concerns, and we believe significant progress was made. Both OCCR and MPD are confident that the revisions made to the MOU will result in a document that fully comports with the Memorandum of Agreement and that creates a solid blueprint for the agencies' exchange of information. MPD and OCCR hope to submit final revisions to the MOU to the Department of Justice during the next quarter.

Part of our MOU with the Office of Citizen Complaint Review requires that MPD provide training to OCCR investigators in MPD policies and procedures. As previously reported, MPD IPS representatives were working on developing training for the OCCR investigators as well as specialized training on use of force for members of the Citizen Complaint Review Board and for OCCR complaint examiners. The first portion of training for OCCR investigators was completed during this quarter. MPD provided a three-day block of training on May 18 through May 20, 2004, to OCCR investigators on MPD's use of force policy, the history and organization of MPD, administrative investigations, interviews and interrogations, and ethics and diversity. OCCR reported that they found the training very useful. OCCR's Executive Director commented favorably on the training and said that MPD's instructors were "very effective and

accommodating in covering the topics of most importance to us and in answering all of our questions." MPD plans to conduct a second block of training during the next quarter that addresses probable cause, contacts stops & frisks, laws of arrest, search and seizure, citation release and detention journal, handling juveniles, and the D.C. Municipal Regulations.

OCCR also continued its practice of sending representatives to informal sessions with MPD recruit classes in order to discuss OCCR's mission and responsibilities. During this quarter, OCCR's Deputy Director met with a class of recruits on May 10, 2004. In addition, OCCR representatives also met with two groups of new FOP shop stewards on April 16, 2004, and on May 12, 2004. Both MPD and OCCR feel that these type of sessions help to provide officers with a good understanding of OCCR's role and responsibilities in investigating citizen complaints. MPD appreciates OCCR's participation in these important sessions.

MPD is very pleased with our relationship with OCCR. MPD has included information and links to the OCCR on its website, and has included information about the OCCR in its printed materials. We feel the increased communication between the two agencies as well as our efforts in the areas of training OCCR investigators and revising the MOU have led to a very positive working relationship.

I n v e s t i g a t i o n s

Use of force and police officer misconduct investigations fall under the purview of the MPD's Office of Professional Responsibility. OPR determines which MPD unit will be responsible for the investigation of specific use of force and misconduct incidents. Within OPR, there are two primary organizational elements that conduct investigations: the Force Investigation Team and the Office of Internal Affairs (OIA). MOA Paragraph 61 requires that the Force Investigation Team investigate serious use of force incidents²⁰ as well as use of force incidents indicating potential criminal conduct.²¹ Other use of force incidents are investigated by the member's chain of command officials and are referred to as "chain of command use of force investigations."

²⁰ MOA Paragraph 33 defines serious use of force as, "lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine."

²¹ MOA Paragraph 35 states, "The term "use of force indicating potential criminal conduct by an officer" shall include all strikes, blows, kicks or other similar uses of force against a handcuffed subject."

The Office of Internal Affairs is responsible for investigating allegations of "serious misconduct" as defined in MOA paragraphs 72 and 73. Other allegations of misconduct are investigated by the member's chain of command officials and are referred to as "chain of command misconduct investigations."

As mentioned earlier in this report, Chief Ramsey requested that the Independent Monitor provide recommendations regarding improvements that could be made to MPD misconduct and non-FIT use of force investigations. The OIM promptly responded to this request, and submitted a report entitled *"Technical Assistance Related to MPD's Chain of Command Investigations"* on April 9, 2004. The report identified eighteen areas where the OIM felt that MPD could make improvements to their investigations.

In response to the report, the Office of Professional Responsibility, lead by the Compliance Monitoring Team, developed and/or enhanced several documents in order to address some of the issues that were identified. Although most of the documents are not formally required by the Memorandum of Agreement, MPD felt it was important to develop these policies and documents to help assist chain of command investigators and to improve the quality of our use of force and misconduct investigations.

MPD found that many of the OIM's recommendations could be addressed through the creation and/or modification of Chain of Command Investigation Templates. Specifically, the following templates were used to address the OIM's recommendation:

- Use of Force Preliminary Investigation Template
- Use of Force Final Investigation Template
- Misconduct Preliminary Investigation Template
- Misconduct Final Investigation Template

MPD began development of the two use of force templates last year in an effort to improve the substance and consistency of our chain of command use of force investigations. The "final" misconduct template is required as part of MOA Paragraph 83, and had previously been submitted for formal Department of Justice (DOJ) review. During the revision process, MPD felt it would be beneficial to also develop a "preliminary" misconduct investigation template. Although a preliminary report is not always required for misconduct investigations, we felt that it was still important to provide guidance for those situations when one is required. All of these templates were revised to reflect the OIM's recommendations.

MPD wants to ensure that all of the Department supervisors use these templates. In order to introduce the templates to the Department, the templates were distributed to all of the Department's Assistant Chiefs and Senior Executive Directors at the end of

May. The Office of Professional Responsibility (OPR) also gave a presentation explaining the templates at MPD's Daily Crime Briefing on May 27, 2004. The Crime Briefing is attended by District Commanders and other unit heads. OPR is also working with MPD's Information Technology Department to have the templates placed on the Department's Intranet. The four templates were provided to the OIM and DOJ on June 7, 2004, and they are included in the Appendix of this report.

One of the OIM's other recommendations concerned the timeliness of MPD investigations. The MOA requires that all investigations be completed within 90 days absent "special circumstances" which must be documented.²² However, the OIM found that for those cases that exceeded the 90-day deadline, many did not document the reason for the delay. In order to address this issue and provide a definition for "special circumstances," MPD drafted Teletype 05-074-04, "*Special Circumstances for Investigations*." The Teletype defines special circumstances as,

"...circumstances in which a critical component that is necessary to complete the investigation is not available by the assigned due-date due to reasons outside of the investigating official's control..."

Examples of special circumstances that may be sufficient for an extension beyond 90 days include the complexity of the case or cases where a subject officer or critical witness has not been available. The Teletype provides specific procedures for investigators who want to request an extension. Investigators must provide their requests in writing, in advance of the due date, to the Assistant Chief of OPR for review. This will ensure that the requests, as well as OPR's approval of the requests, are documented. There is also a requirement in the Teletype that Commanding Officers who submit investigations after the due date, and who do not have written approval from OPR for an extension, submit a copy of the discipline imposed for the investigation being overdue. We believe this requirement will help to increase accountability for completing investigations by the due date.

The Teletype was issued to the Department on May 27, 2004. MPD Teletypes serve as a way of issuing orders and directives to the Department quickly (i.e. in lieu of a General Order.) Each of the MPD districts and other MPD units receive the Teletype via email, and the Commanders' administrative office ensures that the Teletype is distributed to all affected members. The Assistant Chief of OPR has also briefed members of MPD Command Staff on the Teletype to ensure they understand the new process, and it was also discussed, along with the templates, at the May 27, 2004 Daily Crime Briefing. Finally, the June 1, 2004 issue of "*The Dispatch*", MPD's internal newsletter, also described the Teletype and explained the new procedure. A copy of

²² The 90-day deadline begins following the issuance of a criminal declination by the United States Attorney's Office (USAO), when appropriate.

the Teletype can be found in the Appendix of this report.

The final document developed to address the OIM's recommendations is the "*OPR Investigations Integrity Check Sheet*." The purpose of the check sheet is to provide OPR with a list of criteria that highlights many of the issues identified in the OIM's technical assistance report. OPR officials will use the check sheet when reviewing investigations to ensure that the investigations are both complete and sufficient. The check sheet has also been provided to the Districts and other MPD units for them to use as a guideline. While they are not required to complete the sheet, we wanted them to be aware of what OPR would be looking for in reviewing investigations. A copy of the check sheet can be found in the Appendix of this report.

MPD again thanks the OIM for their hard work on the technical assistance report. MPD found the report to be very helpful. We feel documents that were developed and enhanced as a result of the OIM's report will be extremely beneficial in improving our investigations and in ensuring MOA compliance.

Use of Force

Chief of Police Charles Ramsey established the Force Investigation Team in January 1999. The Force Investigation Team has evolved into the new national model for police use of force investigations. The team, which took a business-related perspective to force investigations, has been recognized internationally for its high quality investigations and unique approach to use of force issues.

Previously, investigative protocols were established to comply with the requirements of the Memorandum of Agreement in the form of the *Force Investigation Team Organizational Plan and Operations Manual*. A copy of the revised manual reflecting these protocols was originally submitted to the Department of Justice on February 5, 2002, and to the Independent Monitor on April 8, 2002. After a series of comments and revisions, MPD was pleased to receive DOJ's approval for this important document on December 31, 2003. FIT implemented the manual on January 29, 2004. FIT has worked very hard to provide a comprehensive operations manual that reflects the provisions of the MOA, and they feel that the DOJ-approved manual has been an invaluable resource for their investigators. During this quarter, FIT also submitted an update regarding the training for their investigators. The update was submitted to DOJ on June 30, 2004.

FIT has worked very hard to provide a comprehensive operations manual that reflects the provisions of the MOA, and they feel that the DOJ-approved manual has been an invaluable resource for their investigators.

The OIM has also continued to submit favorable reports regarding the Force Investigation Team and their investigations. In their most recent quarterly report, the OIM said,

“This quarter, we continued our review of all preliminary and final use of force investigation reports prepared by FIT I since January 1, 2003. Again this quarter, we found the investigations performed by FIT to be timely, complete, and sufficient.”²³

FIT is committed to ensuring it maintains a high level of quality in its use of force investigations and will continue to comply with all of the requirements of the MOA.

Use of Force Review Board

MOA Paragraph 67 requires that MPD develop and implement a policy to enhance its Use of Force Review Board (UFRB). Specifically, the paragraph reads,

“...The policy shall require the UFRB to conduct timely reviews of all use of force investigations... The policy shall authorize the UFRB to recommend discipline for violations of MPD's policies and training. The policy shall authorize the UFRB to direct District supervisors to take non-disciplinary action to enable or encourage an officer to modify his or her performance...”

MPD drafted a policy in compliance with the MOA that was approved by DOJ on January 31, 2003. The policy was implemented by MPD on February 14, 2003. The Board is composed of three permanent and two rotating members. The Commander of the Special Operations Division (SOD) chairs the Board. The Vice Chair position is held by the Commanding Officer of the Office of the Superintendent of Detectives (OSD). A management level official from the Institute of Police Science serves as the third permanent member of the Board. The two rotating positions are filled by members at the rank of Commander or above and are selected by the Assistant Chief of OPR.

During this quarter, the OIM reviewed the operations of the Board to assess their compliance with the requirements of the MOA. They focused on all of the cases that the Board reviewed during 2003. Although the OIM has not yet issued their formal report, they did notify MPD of several immediate concerns they had with their findings. The OIM held several conference calls at the end of the quarter with representatives from various MPD units to discuss their preliminary findings.

One of the primary issues that was identified by the OIM was a problem in the transferring of cases from the Use of Force Review Board to the Institute of Police Science when a "Tactical Improvement Opportunity" (TIO) was recommended for the officer. Specifically, IPS has no record of receiving the cases for 2003.

²³ *Eighth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, May 13, 2004, p.25.

MPD is continuing to investigate this issue, and will work to remedy it as soon as possible. However, as an immediate action, MPD is preparing new packages for the nineteen (19) investigations that contained TIO recommendations during 2003. Those files will be forwarded to IPS for review. MPD will work during the next quarter to ensure that these recommendations are reviewed by IPS and will also begin administering the recommended training to the identified officers as appropriate.

MPD greatly appreciates the OIM sharing this information with MPD in a timely fashion. MPD found the discussions with the OIM on this issue to be very helpful, and we appreciate the OIM's continued practice of briefing MPD on any areas of concern as soon as possible.

Office of Internal Affairs

MPD's Office of Internal Affairs continued to be a primary hub of MOA compliance efforts. As discussed earlier, MPD implemented the *Serious Misconduct Investigations General Order* on January 16, 2004 of this year. The *Serious Misconduct General Order* serves as the basis for outlining OIA's investigative responsibilities with regards to MOA requirements. The MOA specifies the types of alleged misconduct that must be investigated by the Office of Internal Affairs. MPD has defined these types of misconduct as "serious misconduct." While MPD has been committed to following these requirements in practice, issuing the Department's general order formally codifies the MOA requirements as Department policy.

During this quarter, the Office of the Independent Monitor continued its practice of reviewing FIT, OIA, and chain of command investigative reports. During this quarter, the OIM reviewed a random selection of misconduct and non-FIT use of force cases.²⁴ The investigations are reviewed for compliance with the MOA by the OIM's police practice experts. The selected sample consisted of investigations randomly selected from each of the seven police districts and other MPD assignments. The OIM and MPD worked together this quarter to provide the police practice experts with copies of the selected cases. The OIM again devoted a significant amount of time this quarter to reviewing the selected sample. MPD looks forward to receiving feedback from the OIM on their review.

MPD's Office of Professional Responsibility is committed to implementing the remaining reforms contained in the MOA and looks forward to continuing its work with the Office of the Independent Monitor and with DOJ.

²⁴ MPD and the OIM had previously clarified that FIT and OCCR investigations would not be considered part of the sample.

Police Canine Teams

On May 4, 2000 the Metropolitan Police Department implemented an interim canine policy and began the initiation of significant improvements in our canine operations. The Department of Justice acknowledged these improvements in paragraph 44 of the Memorandum of Agreement. Paragraph 44 reads,

“DOJ acknowledges that MPD has implemented an interim canine policy via teletype and has initiated significant improvements in its canine operations, including the introduction of a new handler-controlled alert curriculum and the use of new canines.”

After the signing of the MOA, MPD worked on developing a revised *Canine Teams General Order* that incorporated relevant MOA requirements. DOJ approved MPD's *Canine Teams General Order*, and that policy was implemented in October 2002.

MPD has been pleased with the progress of the implementation of the *Canine Teams General Order*, and is extremely satisfied with the creation of the new *Canine Operations Manual*. However, as previously reported, the Office of Professional Responsibility conducted an assessment of MPD police canine incidents last year that had occurred since the institution of the second Force Investigation Team in January 2002. While the overwhelming number of canine bites were justified and within policy, the assessment did raise some questions concerning on-lead canine bites and warning announcements related to canine deployment. Further, issues were raised concerning the shifts and squads involved in canine bite incidents. The OIM also raised several concerns in their April 2003 quarterly report.²⁵

In response to these concerns, the Commander of the Special Operations Division began to institute changes within the Canine Unit. MPD also submitted a revised version of the approved *Canine Teams General Order* to the Department of Justice for review on June 4, 2003. DOJ's primary concerns were with canine bites that were occurring while canines were “on-lead” and bites that were occurring without a warning being given. MPD agreed with these concerns and revised the *Canine Teams General Order* to address these issues. MPD's primary focus in revising the general order was to provide a more comprehensive definition for Handler-Controlled Alert Methodology (HCAM), the canine training methodology employed by MPD. MPD feels that the revised general order, along with the training enhancements²⁶ instituted by the Canine Unit will address the concerns that have been raised.

²⁵ Fourth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department, April 29, 2003.

²⁶ See “Transition Point” and “Decision Point” discussion, *Metropolitan Police Department and U.S. Department of Justice Memorandum of Agreement Progress Report*, July 10, 2003, p.14

DOJ provided comments on the revised order on July 25, 2003. In their July 25, 2003 letter, DOJ also promised to provide specific recommended policy revisions that DOJ believed to be consistent with the Memorandum of Agreement requirements and the parties' understanding of the Agreement. On September 30, 2003, DOJ provided the policy recommendations to further guide MPD's revisions of the *Canine Teams General Order*. On December 31, 2003, MPD submitted a revised *Canine Teams General Order* as well as specific responses to DOJ's policy recommendations for MPD's Canine Program. On March 31, 2004 DOJ provided a response to MPD's December submission. MPD provided a response to DOJ on June 26, 2004 that we hope addresses all of the remaining concerns with the revised order. MPD appreciates DOJ's continued efforts in this area. DOJ has been very responsive to MPD on this issue and has devoted a great deal of their resources to working with us over the past year.

MPD remains committed to ensuring that our canine program continues to result in the handler having total control over the canine. In Handler Controlled Alert Methodology, the "decision" to bite is made by the handler and not by the dog.²⁷

In their most recent report, the OIM provided a very favorable review of MPD's canine program. Among their findings, they reported that,

*"The OIM conducted an extensive review of canine deployments and "bite" incidents in 2003, and we have concluded that, at this time, MPD's canine program is in substantial compliance with the requirements of the MOA relating to supervisor approval of canine deployments."*²⁸

The OIM also reported that, based on their review of all of the 2003 completed FIT canine investigations (13 in total), MPD's canine contacts "were within MPD's draft policy and consistent with the MOA."²⁹ As part of their review, the OIM provided several suggestions for training of handlers based on their review of the canine investigations and also made recommendations regarding the completion of paperwork related to canine deployments. The OIM provided favorable reviews regarding MPD's canine training and our adherence to the requirement to purchase "professionally-bred" dogs.³⁰ MPD is very pleased with the OIM's findings and will continue to review the recommendations they have made.

²⁷ The only circumstance under which a canine may contact/bite without handler command is if the canine, the canine handler, or another is threatened with possible attack.

²⁸ See *Eighth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, May 13, 2004, p. 2

²⁹ See *Eighth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, May 13, 2004, p. 10

³⁰ See MOA paragraph 146.

In addition to the general order revisions described above, MPD also submitted its comprehensive Canine Lesson Plan and Training Curriculum to DOJ on October 4, 2002 (MOA Paragraph 145). A *Canine Operations Manual* was also developed (MOA Paragraph 147). A draft of the manual, which institutionalizes almost all MPD canine issues into one document, was completed and submitted to DOJ on November 27, 2002. DOJ provided comments on both the training curriculum and the manual on September 30, 2003. In their comments, DOJ stated that, "The materials which MPD submitted will likely need to be substantially revised and expanded upon once DOJ and MPD reach agreement about how this methodology is going to be implemented at MPD in compliance with the MOA." MPD has delayed making revisions to the Manual and the Lesson Plan while we have been working with DOJ on finalizing revisions to the *Canine Teams General Order*. Given the progress made on the order during this quarter, MPD hopes to receive approval on the order shortly, and will revise the Manual and Lesson Plan accordingly.

MPD's Canine Unit continues to be committed to ensuring that their policies and practices adhere to the requirements and to the spirit of MOA. MPD will continue to work with DOJ during the next quarter to finalize revisions to the *Canine Teams General Order*.

T r a i n i n g

Training and education are key aspects of the Metropolitan Police Department's use of force management. Accordingly, the Department's Maurice T. Turner Institute of Police Science is tasked with the responsibility to train members of the Department on the reengineered MPD policies. IPS has continued its efforts regarding compliance with the MOA.

Lesson Plans

Pursuant to MOA Paragraph 119 and 122, MPD originally submitted the eleven lesson plans that comprise its use of force curriculum to DOJ on July 24, 2002. The following lesson plans were submitted:

- ASP Tactical Baton Training Program– **DOJ APPROVED (09-30-03)**
- Close Quarter Combat– **DOJ APPROVED (09-30-03)**
- Controlled F.O.R.C.E. – **DOJ APPROVED (09-30-03)**
- Ground Fighting – **DOJ APPROVED (09-30-03)**
- Handcuffing – **DOJ APPROVED (09-30-03)**
- Krav/Maga – **DOJ APPROVED (09-30-03)**
- OC Spray
- Officer Street Survival

- Pistol Qualification – **DOJ APPROVED (09-30-03)**
- Use of Force Continuum (with Manual)³¹
- Verbal Judo

Additionally, IPS completed development of sixteen lesson plans in September 2002 to demonstrate compliance with MOA paragraphs 84, 98, 129. The lesson plans also served as the curriculum for fiscal year 2003 Annual In-Service Training. The following lesson plans were created and forwarded to DOJ:

- Administrative Misconduct Investigation Policy & Procedures using the Preponderance of Evidence Standard
- Arrest, Custody, and Restraint Procedures
- Bias-related Hate Crimes – **DOJ APPROVED (05-16-03)**
- Canine Policies and Procedures
- Command Accountability – **DOJ APPROVED (11-25-02)**
- Communication and Interpersonal Relationship Skills – **DOJ APPROVED (11-25-02)**
- Crime Scene Preservation – **DOJ APPROVED (05-16-03)**
- Cultural Diversity and Sensitivity Awareness
- Defensive Tactics – **DOJ APPROVED (05-16-03)**
- Ethics, Integrity, and Professionalism – **DOJ APPROVED (11-25-02)**
- Interview and Interrogation
- Theories of Motivation and Leadership – **DOJ APPROVED (11-25-02)**
- Use of Force and Use of Force Continuum (with Manual)³²
- Use of Force Incident Report Form
- Use of Force Review Board
- Verbal Judo Recertification – **DOJ APPROVED (11-25-02)**

As noted above, many of the lesson plans were subsequently approved by DOJ. DOJ provided comments on both the In-Service Lesson Plans and on the Use of Force Curriculum Lesson Plans on November 25, 2002. On March 19, 2003, MPD submitted ten revised lesson plans to DOJ. DOJ provided comments on May 16, 2003 on the lesson plans that were submitted. DOJ also provided approval for seven use of force lesson plans as part of their September 30, 2003 letter regarding various IPS-related deliverables.

³¹ It should be noted that this lesson plan was also submitted as one of the sixteen lesson plans that comprised the curriculum for fiscal year 2003 Annual In-Service Training.

³² It should be noted that this lesson plan was also submitted as one of the eleven lesson plans that comprised the use of force curriculum originally submitted to DOJ July 24, 2002 .

During this quarter, MPD submitted revisions to five of the remaining lesson plans listed above to DOJ for review, specifically:

- Arrest, Custody, and Restraint Procedures
- Interview and Interrogation
- OC Spray
- Officer Street Survival
- Use of Force Continuum (with Manual)

DOJ provided comments on these lesson plans on June 29, 2004. MPD is currently reviewing those comments.

Other IPS Memorandum of Agreement Activities

On December 31, 2003 MPD submitted the Semi-Annual Review of our Use of Force Curriculum prepared by the Curriculum Development Specialist at IPS. These reviews are required by MOA Paragraph 119 to be submitted to both the Department of Justice and the Independent Monitor. On March 30, 2004, DOJ provided comments on MPD's most recent submission. DOJ expressed some concerns regarding the format of the reports, and requested that the Independent Monitor review MPD's semi-annual reviews in an upcoming quarterly report. Another semi-annual review was due to DOJ on June 30, 2004. However, MPD had concerns with the report and requested a delay in submitting the report to DOJ. The CMT and IPS staff have been working on revising the report to ensure it addresses DOJ's concerns as outlined in their March 30, 2004 letter. We feel the additional time will result in a more comprehensive report that fully comports with the intent of the MOA.

Paragraphs 136 and 137 of the MOA require, in part, that MPD develop and implement a formal instructor-training course, subject to the approval of DOJ, to ensure that instructors receive adequate training to enable them to carry out their duties. Based on the renegotiated dates of the first modification of the MOA³³, MPD notified DOJ on December 31, 2002 that in lieu of contracting with a new vendor for the Instructor Certification Program, IPS had evaluated and selected the State of Maryland Police and Corrections Training Commission Enhanced Instructor Certification Course as the means for complying with Paragraphs 136 and 137 of the MOA. On September 30, 2003, DOJ notified MPD that they were requesting that the OIM observe and evaluate the Maryland program. The OIM included their evaluation in their most recent quarterly report. MPD was pleased with the OIM's evaluation which found that, "the MPCTC program is comprehensive and satisfies the requirements of the MOA with respect to

³³ See "Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2002," paragraph 7.

instructor training and certification.”³⁴ However, in their quarterly report, the OIM also raised serious concerns regarding the delays MPD has experienced in submitting its revised Field Training Officer Program to DOJ. MOA paragraph 121f requires MPD to,

“...develop a protocol, subject to approval by DOJ, to enhance the Field Training program. The protocol shall address the criteria and method for selecting Field Trainers, the training provided to Field Trainers to perform their duties, the length of time that probationary officers spend in the program, the assignment of probationary officers to Field Trainers, the substance of the training provided by the Field Trainers, and the evaluation of probationary officer performance by Field Trainers...”

MPD is working to address this outstanding issue as soon as possible.

As previously reported, MPD IPS representatives were working on developing training for the OCCR investigators as well as specialized training on use of force for members of the Citizen Complaint Review Board and for OCCR complaint examiners. The first portion of training for OCCR investigators was completed during this quarter. MPD provided a three-day block of training on May 18 through May 20, 2004, to OCCR investigators on MPD's use of force policy, the history and organization of MPD, administrative investigations, interviews and interrogations, and ethics and diversity. OCCR reported that they found the training very useful. OCCR's Executive Director commented favorably on the training and said that MPD's instructors were “very effective and accommodating in covering the topics of most importance to us and in answering all of our questions.” MPD plans to conduct a second block of training during the next quarter that addresses probable cause; contacts, stops and frisks; laws of arrest; search and seizure; citation release and detention journal; handling juveniles; and the D.C. Municipal Regulations.

OCCR also continued its practice of sending representatives to informal sessions with MPD recruit classes in order to discuss OCCR's mission and responsibilities. During this quarter, OCCR's Deputy Director met with a class of recruits on May 10, 2004. Both MPD and OCCR feel that these type of sessions help to provide officers with a good understanding of OCCR's role and responsibilities in investigating citizen complaints. MPD appreciates OCCR's participation in these important sessions.

³⁴ See *Eighth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, May 13, 2004, p. 4

Personnel Performance Management System

The Metropolitan Police Department and the District of Columbia have committed to develop and fully implement the Personnel Performance Management System. PPMS will be,

“a computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of the Police Department and its personnel.”³⁵

PPMS will be used regularly and affirmatively by the Metropolitan Police Department to promote civil rights integrity and best professional police practices.

As previously reported, MPD acknowledged that it had not met the original PPMS timetables set forth in the MOA, and Chief Ramsey was not satisfied with the progress made on the project. He recognized that the Department's efforts in this area needed to be enhanced. Accordingly, Chief Ramsey reorganized the MPD Information Technology Division (MPD-IT), and appointed a new Chief Information Officer (CIO) who reports directly to him. In turn, the CIO appointed a Director for the PPMS project to ensure that the PPMS program is treated as a priority. Accordingly, MPD, DOJ and the City were able to reach agreement on September 30, 2003 to a second modification to the MOA that provided revised deadlines for all PPMS-related MOA deliverables.³⁶

In accordance with MOA Paragraph 114b, MPD selected IBM and CRISNet Incorporated to develop PPMS. IBM/CRISNet began work with the Department in September 2003. MPD and IBM/CRISNet worked very closely during late 2003 and early 2004 to finalize the development of PPMS system requirements. However, as previously reported, MPD experienced a significant setback in the area of funding for PPMS during the last reporting period. MPD had to temporarily interrupt work with IBM/CRISNet on March 31, 2004 due to a lack of funding. Accordingly, since March 2004, MPD has been directing its efforts toward securing the necessary funding for restarting work with IBM/CRISNet.

MPD notified DOJ of the funding setback on March 8, 2004 and has kept both the Department of Justice and the Office of the Independent Monitor updated on our progress with identifying the necessary additional funding. Since March, MPD has been aggressively pursuing alternate funding options in order to restart work with our IBM/CRISNet as soon as possible. MPD has been working very closely with the District's Office of Contracting and Procurement as well as the Mayor's Office to address

³⁵ MOA Paragraph 106

³⁶ See “Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2002”

this issue. During this quarter, MPD's Chief Information Officer, members of his staff, the OPR Assistant Chief, and the Compliance Monitoring Team had a series of teleconferences with the Department of Justice to outline our efforts to secure funding and to answer DOJ's questions regarding the City's budget process.

Based on the Second Modification to the MOA, MPD was required to provide both DOJ and the Independent Monitor a beta version of PPMS for testing beginning on June 25, 2004. Given the current financial setbacks, MPD realized that we would be unable to meet this date. Accordingly, on June 14, 2004, MPD formally notified DOJ that we would be unable to meet these deadlines and formally requested a third modification to the MOA. In the letter, we informed DOJ that MPD's Information Technology staff was working on developing a new proposed development schedule and that we would forward the proposed dates as soon as possible for review and approval. Also on June 14, 2004, DOJ sent a letter to Chief Ramsey outlining their serious concerns with the delays in the PPMS project and reiterating their request for new proposed dates for the development of PPMS.

On June 18, 2004 MPD submitted a proposed development schedule to DOJ that further outlined MPD's proposal for the modification. In addition to the proposed development schedule, MPD also provided a listing of assumptions that guided the development of the revised project schedule. MPD looks forward to DOJ's comments on the proposed dates and hopes we are able to agree to a modification of the MOA that will accommodate the delays experienced in the development of PPMS. While this work interruption will impact our development of PPMS, both MPD and the City are working very hard to ensure that the impact of the interruption is minimized.

As part of the second modification to the MOA, MPD agreed to provide a plan for compliance with MOA Paragraph 113 on November 14, 2003. MOA Paragraph 113 reads,

"The City shall maintain all personally identifiable information about an officer included in PPMS during the officer's employment with MPD and for at least five years thereafter (unless otherwise required by law to be maintained for a longer period). Information necessary for aggregate statistical analysis shall be maintained indefinitely in PPMS. On an ongoing basis, MPD shall enter information in PPMS in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner."

However, on November 14, 2003, MPD requested that DOJ provide an extension until January 5, 2004 to complete the plan for compliance. On December 3, 2003, DOJ granted MPD's request. Accordingly, MPD submitted its plan for compliance with paragraph 113 on January 5, 2004. DOJ provided their comments on May 6, 2004. MPD is currently reviewing those comments.

MPD is clearly very concerned with the PPMS funding setbacks. However, both MPD and the City have devoted substantial resources and efforts to identify the funding necessary to get PPMS development back on track. MPD plans to keep both the Department of Justice and the Office of the Independent Monitor apprised of any future developments. MPD remains committed to implementing PPMS and will continue to treat the implementation of the system as a priority for the Department.

Performance Evaluation System

The Metropolitan Police Department submitted a draft *Enhanced Performance Evaluation System Protocol* (MOA Paragraph 118) to DOJ on November 8, 2002. DOJ provided comments on the protocol on May 2, 2003. MPD provided a status report on those comments on September 30, 2003. On October 6, 2003 DOJ provided comments on MPD's update.

On March 5, 2004, MPD provided an additional update regarding its efforts in revising the Performance Evaluation System. This most recent update outlines the work done by MPD to date as well as the remaining tasks. The primary remaining tasks are the staffing of the *Performance Management System (PMS) for Sworn Members Serving in the Ranks/Positions of Officer, Agent, and Sergeant General Order*, and the completion of the revised manuals for officer and sergeant performance evaluation standards. In the update, MPD notified DOJ that we had already incorporated many of their previous suggestions into the general order and will continue addressing the remaining issues. MPD expects to share the final drafts of the documents with the Department of Justice early in the next reporting period.

Department of Justice

Since the creation of the Compliance Monitoring Team in February 2002, there has been significant, sustained interaction between the Metropolitan Police Department and the Department of Justice. Notwithstanding telephone calls and correspondence, there have been numerous other contacts between the two agencies in order to continue the established dialogue.

During this reporting period, representatives from MPD and DOJ met at the monthly "all-hands" meeting held at the Office of the Independent Monitor, as well as monthly DOJ and CMT Meetings that are held on the third Thursday of every month. DOJ also provided comments on MPD work products during the quarter consistent with MOA

paragraph 178.³⁷ DOJ provided comments on a number of MPD deliverables including:

- *Carrying Service Firearms While Off-Duty in the District of Columbia Special Order* (MOA paragraph 42)
- Five MOA-related Lesson Plans (MOA paragraphs 84, 122, and 129)
- MPD and OCCR Memorandum of Understanding (MOA paragraph 85)
- MPD's *Chain of Command Misconduct Investigations General Order* and *Chain of Command Misconduct Investigations Manual* (MOA paragraph 83)
- MPD's Plan for Compliance with MOA Paragraph 113 (MOA paragraph 113)
- *Limitation on Work Hours General Order* (MOA paragraph 159)

DOJ representatives also provided a great deal of time and resources to discussions involving the proposed revisions to the Use of Force Incident Report as well as to discussions regarding the status of PPMS funding. We appreciate DOJ's continued assistance with these items.

The level of cooperation between the MPD and DOJ remains high. MPD is extremely pleased with the relationship that exists with the U.S. Department of Justice. DOJ's MPD team is continually professional, responsive, and helpful. The Metropolitan Police Department looks forward to continuing its partnership with the Department of Justice to jointly complete the requirements of this Memorandum of Agreement.

F r a t e r n a l O r d e r o f P o l i c e

The Fraternal Order of Police is the Labor Union for all police officers, technicians, detectives, and sergeants on the Metropolitan Police Department. The Metropolitan Police Department recognizes the importance and value of including the FOP in Memorandum of Agreement endeavors.

However, the relationship between MPD and the FOP, at times, has been challenging. The FOP had initially declined to participate in MOA-related endeavors, and has previously filed an Unfair Labor Practice (ULP) Complaint against the Metropolitan Police Department with the District of Columbia Public Employees Relations Board (PERB). The Labor Union cited alleged changes in terms and conditions of employment relating to the Memorandum of Agreement as the reason for the filing.

As previously reported, the PERB stated that the filing of the Unfair Labor Practice charge fell outside of the 120-day window established by PERB Rule 520.4 for filing

³⁷ MOA paragraph 178 reads, "DOJ shall review documents and information provided by MPD and the Monitor and shall provide its analysis and comments to the City, MPD and the Monitor at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts."

such charges. The Hearing Examiner did not address the merits of the case. Exceptions were filed by the union and opposed by the Department. A decision from the PERB will be forthcoming.

However, FOP representatives have continued their involvement with various aspects of the MOA. The FOP has continued its practice of providing comments on draft general orders prior to their submission to DOJ, most recently with the *Citizen Complaints General Order*. FOP representatives have also continued their involvement with the development of PPMS. FOP members play an active role in the development of the Early Intervention Program that will be part of PPMS. MPD has found the input provided by the FOP in these areas to be very useful.

MPD believes that the inclusion of the FOP in discussion of MOA issues as well as keeping them informed on MPD's progress has been useful to both parties. MPD hopes to continue this process as we move forward with the MOA.

FOP representatives have also continued their involvement with the development of PPMS. FOP members play an active role in the development of the Early Intervention Program that will be part of PPMS. MPD has found the input provided by the FOP in these areas to be very useful.

Independent Monitor

The Memorandum of Agreement requires that the Metropolitan Police Department and the Department of Justice jointly select an Independent Monitor to review, report, and assist on matters related to the Agreement's implementation (MOA Paragraph 161). On March 28, 2002, the Metropolitan Police Department and the law firm of Fried, Frank, Harris, Shriver & Jacobson jointly announced that Michael R. Bromwich had been selected as the Independent Monitor. Mr. Bromwich is a partner at the firm, and is head of the internal investigations, compliance and monitoring practice group there.

The Independent Monitor completes and disseminates quarterly progress reports regarding MPD's Memorandum of Agreement compliance efforts. The next report is scheduled to be completed later this month. Previous reports, are available at the Independent Monitor's website at www.policemonitor.org.

The Independent Monitor continues to host monthly "all-hands" meetings in which all MOA stakeholders meet including the Chief of Police, DOJ, the Office of Citizen Complaint Review, the Office of the Corporation Counsel, and the Compliance Monitoring Team. These meetings occur on the first Monday of each month.

Additionally, the Compliance Monitoring Team has been assisting the OIM by facilitating document and meeting requests throughout the Department. During this reporting period, the Compliance Monitoring Team has been assisting the Independent Monitor to facilitate OIM compliance activities including:

- Reviewing chain of command investigations
- Reviewing Office of Internal Affairs investigations
- Reviewing FIT investigations
- Reviewing Use of Force Incident Reports (UFIR)
- Reviewing Use of Force Review Board (UFRB) procedures and determinations
- Monitoring in service firearms training and use of force continuum training

During this quarter, the OIM spent a substantial amount of time reviewing the procedures and determinations of the UFRB. During this quarter, the OIM reviewed the operations of the Board to assess their compliance with the requirements of the MOA. As described earlier, they focused on all of the cases that the Board reviewed during 2003. When the OIM identified a problem in the transferring of cases from the Use of Force Review Board (UFRB) to the Institute of Police Science when a "Tactical Improvement Opportunity" (TIO) was recommended for the officer, the OIM contacted MPD management immediately. MPD and the OIM had several conference calls at the end of this quarter to discuss the OIM's findings. MPD greatly appreciates the OIM sharing this information with MPD in a timely fashion. MPD found the discussions with the OIM on this issue to be very helpful, and we appreciate the OIM's continued practice of briefing MPD on any areas of concern as soon as possible.

MPD is pleased with the progress made by the OIM on defining "substantial compliance" during this quarter. MPD believes we are creating measures that are realistic, theoretically sound, and consistent with the understanding of the parties when they entered into the Agreement.

As discussed earlier, the OIM has also made significant progress in defining how they will measure "substantial compliance" for the MOA. The MOA states that,

*"The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained a substantial compliance for at least two years."*³⁸

On April 8, 2004, the OIM, DOJ, and MPD held a very productive meeting on the topic and agreed to some

³⁸ MOA Paragraph 182

general guidelines for how substantial compliance would be measured for the remainder of the Agreement. At that meeting, we discussed the importance of balancing both quantitative and qualitative measures for substantial compliance. The OIM also completed revisions to their draft compliance document that provides proposed compliance definitions for 126 of the 194 MOA paragraphs.³⁹

MPD is pleased with the progress made by the OIM on defining "substantial compliance" during this quarter. MPD believes we are creating measures that are realistic, theoretically sound, and consistent with the understanding of the parties when they entered into the Agreement. MPD feels that the parties have continued to make progress on this important endeavor and we look forward to continuing to work with DOJ and the OIM on this very important issue.

Conclusion

The Metropolitan Police Department is pleased with the progress made by the Department during this quarter. As we enter our fourth year of compliance efforts, the Department remains committed to completing the balance of reforms contained in the Memorandum of Agreement.

MPD submitted additional deliverables for DOJ review this quarter including the:

- *Limitation on Work Hours General Order* (MOA Paragraph 159)
- *Canine Teams General Order* (MOA 44-46),
- Force Investigation Team (FIT) Training Update (MOA paragraph 84).

MPD also implemented Special Order 04-07, *Carrying Service Firearms While Off-Duty in the District of Columbia* on April 1, 2004. The order addresses MOA paragraph 42 by defining the circumstances when an off-duty member of the force is excused from carrying his or her authorized service firearm while off-duty. MPD completed the creation of four investigative templates and supporting policies designed to address recommendations made by the Independent Monitor regarding misconduct and chain of command use of force investigations. We feel the templates and policies that were developed as a result of the OIM's recommendations will be extremely beneficial in improving our investigations and in ensuring MOA compliance. MPD is also very pleased by the OIM's continued favorable reviews regarding MPD's FIT investigations as well as their recent findings regarding the canine program and the Maryland Police and Corrections Training Commission Enhanced Instructor Certification Course used to certify IPS instructors.

³⁹ It should be noted that the OIM provided compliance definitions for all of the MOA paragraphs that can be measured. Paragraphs that contained either definitions or background information will not be measured.

However, MPD remains very concerned with the lack of necessary funding for PPMS. MPD is devoting significant time and attention to identifying additional funding for PPMS and continues to treat PPMS as a priority for the Department. MPD looks forward to comments on the proposed dates for a third modification to the MOA that were submitted to DOJ this quarter. MPD is also committed to submitting remaining MOA deliverables to DOJ including the Field Training Officer protocol, the Citizen Complaint General Order, and the OCCR MPD Memorandum of Understanding.

The Metropolitan Police Department remains committed to becoming fully compliant with the provisions of the MOA and becoming the national model on how to uphold the rule of law while using force only when and to the extent necessary.

Attachments

- *MPD-DOJ Memorandum of Agreement Completion Matrix Report*, June 30, 2004
- *Special Order 04-07, Carrying Service Firearms While Off-Duty in the District of Columbia*, April 1, 2004.
- Letter from MPD to DOJ regarding the "*Use of Force Incident Report Revisions*," April 9, 2004. (Attachments included.)
- Letter from MPD to DOJ regarding the "*Specialized Mission Unit General Order and Specialized Mission Use of Force Incident Report*," April 9, 2004.
- Teletype 05-074-04, "*Special Circumstances for Investigations*," May 27, 2004.
- *MPD Use of Force Preliminary Investigation Template*, June 7, 2004.
- *MPD Use of Force Final Investigation Template*, June 7, 2004.
- *MPD Misconduct Preliminary Investigation Template*, June 7, 2004.
- *MPD Misconduct Final Investigation Template*, June 7, 2004.
- *OPR Investigations Integrity Check Sheet*, June 7, 2004.
- Letter from MPD to DOJ regarding the "*Personnel Performance Management System Proposed Modification Dates*," June 18, 2004. (Attachments included.)